

ASSEMBLY BILL

No. 634

Introduced by Assembly Member Harkey

February 25, 2009

An act to amend Section 831.7 of the Government Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 634, as introduced, Harkey. Hazardous recreational activities.

Under existing law, public entities and public employees are generally not liable to any person who participates in various hazardous recreational activities, as defined, including, but not limited to, certain water contact and diving activities, kayaking, surfing, waterskiing, white water rafting, and windsurfing. These provisions do not limit liability that would otherwise exist for damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee.

This bill would include any form of self-contained underwater breathing apparatus (SCUBA) diving among these hazardous recreational activities. The bill would provide that the exception to this provision allowing liability where a specific fee is charged does not include a fee or surcharge levied, charged, or collected for SCUBA diving access to an artificial reef created or placed in cooperation with the state or any political subdivision thereof, and operated by a 501(c)(3) nonprofit public benefit corporation. The bill would provide that any person participating in those SCUBA diving activities does so at their own risk.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 831.7 of the Government Code is amended to read:

831.7. (a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this section, “hazardous recreational activity” means a recreational activity conducted on property of a public entity ~~which~~ *that* creates a substantial ~~(as, as distinguished from a minor, trivial, or insignificant) insignificant~~, risk of injury to a participant or a spectator.

“Hazardous recreational activity” also means:

(1) Water contact activities, except diving, in places where, or at a time when, lifeguards are not provided and reasonable warning thereof has been given, or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports ~~(i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants)~~, surfing, trampolining, tree climbing, tree rope swinging, waterskiing, white water rafting, and windsurfing. For the purposes of this subdivision, “mountain bicycling” does not include riding a bicycle on paved pathways, roadways, or sidewalks. *For the purpose of this paragraph, “body contact sports” means sports in which it is reasonably foreseeable*

1 *that there will be rough bodily contact with one or more*
2 *participants.*

3 *(4) Any form of self-contained underwater breathing apparatus*
4 *(SCUBA) diving including, but not limited to, recreational diving,*
5 *technical diving, deep water diving, wreck diving, and penetration*
6 *diving. SCUBA diving is recognized as an inherently hazardous*
7 *activity involving risks of decompression sickness, embolism, or*
8 *other hyperbaric injuries that may require treatment in a*
9 *recompression chamber and diving on shipwrecks or overhead*
10 *environments involves further possible hazards related to drowning*
11 *or entrapment. Any person SCUBA diving on any vessel placed*
12 *as an artificial reef in cooperation with the state or any political*
13 *subdivision thereof, and operated by a 501(c)(3) nonprofit public*
14 *benefit corporation does so at his or her own risk.*

15 *(c) (1) Notwithstanding the provisions of subdivision (a), this*
16 *section does not limit liability which that would otherwise exist*
17 *for any of the following:*

18 ~~(1)~~
19 *(A) Failure of the public entity or employee to guard or warn*
20 *of a known dangerous condition or of another hazardous*
21 *recreational activity known to the public entity or employee that*
22 *is not reasonably assumed by the participant as inherently a part*
23 *of the hazardous recreational activity out of which the damage or*
24 *injury arose.*

25 ~~(2)~~
26 *(B) Damage or injury suffered in any case where permission to*
27 *participate in the hazardous recreational activity was granted for*
28 *a specific fee. For the purpose of this paragraph subparagraph, a*
29 *“specific fee” does not include a either of the following:*

30 *(i) A fee or consideration charged for a general purpose such as*
31 *a general park admission charge, a vehicle entry or parking fee,*
32 *or an administrative or group use application or permit fee, as*
33 *distinguished from a specific fee charged for participation in the*
34 *specific hazardous recreational activity out of which the damage*
35 *or injury arose.*

36 ~~(3)~~
37 *(ii) A fee or surcharge levied, charged, or collected for SCUBA*
38 *diving access to an artificial reef created or placed in cooperation*
39 *with the state or any political subdivision thereof, and operated*
40 *by a 501(c)(3) nonprofit public benefit corporation.*

1 (C) Injury suffered to the extent proximately caused by the
2 negligent failure of the public entity or public employee to properly
3 construct or maintain in good repair any structure, recreational
4 equipment or machinery, or substantial work of improvement
5 utilized in the hazardous recreational activity out of which the
6 damage or injury arose.

7 ~~(4)~~

8 (D) Damage or injury suffered in any case where the public
9 entity or employee recklessly or with gross negligence promoted
10 the participation in or observance of a hazardous recreational
11 activity. For purposes of this paragraph, promotional literature or
12 a public announcement or advertisement—~~which~~ *that* merely
13 describes the available facilities and services on the property does
14 not in itself constitute a reckless or grossly negligent promotion.

15 ~~(5)~~

16 (E) An act of gross negligence by a public entity or a public
17 employee—~~which~~ *that* is the proximate cause of the injury.

18 (2) Nothing in this subdivision creates a duty of care or basis
19 of liability for personal injury or ~~for~~ damage to personal property.

20 (d) ~~Nothing—Except as provided in paragraph (4) of subdivision~~
21 ~~(b), nothing~~ in this section—~~shall limit~~ *limits* the liability of an
22 independent concessionaire, or any person or organization other
23 than the public entity, whether or not the person or organization
24 has a contractual relationship with the public entity to use the
25 public property, for injuries or damages suffered in any case as a
26 result of the operation of a hazardous recreational activity on public
27 property by the concessionaire, person, or organization.